

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg  
. Chapter 11  
.   
MOTORS LIQUIDATION COMPANY, . (Jointly administered)  
et al., f/k/a GENERAL .  
MOTORS CORP., et al, . One Bowling Green  
. New York, NY 10004  
Debtors. .  
. Thursday, August 17, 2017  
. 3:05 p.m.  
. . . . .

TRANSCRIPT OF IN COURT CONFERENCE  
(CC: DOC NOS. 14053, 14056)  
BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: King & Spalding LLP  
By: ARTHUR STEINBERG, ESQ.  
SCOTT DAVIDSON, ESQ.  
1185 Avenue of the Americas  
New York, New York 10036-4003  
(212) 556-2158

For the Ignition Switch  
plaintiffs and certain  
non-Ignition Switch  
plaintiffs: Brown Rudnick LLP  
By: EDWARD S. WEISFELNER, ESQ.  
HOWARD S. STEEL, ESQ.  
7 Times Square  
New York, New York 10036  
(212) 209-4917

Audio Operator: Timothy Wilson, ECRO

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Fishers, IN 46038  
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APPEARANCES (Continued):

For the Ignition Switch  
plaintiffs and certain  
non-Ignition Switch  
plaintiffs and states  
of California and  
Arizona:

Hagens Berman Sobol Shapiro LLP  
By: STEVE W. BERMAN, ESQ.  
1918 Eighth Ave.  
Suite 3300  
Seattle, Washington 98101  
(206) 623-7292

For Personal Injury  
Accident Plaintiffs:

Goodwin Procter LLP  
By: WILLIAM P. WEINTRAUB, ESQ.  
GREGORY FOX, ESQ.  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018-1405  
(212) 813-8839

For Participating  
Unitholders:

Akin Gump Strauss Hauer & Feld LLP  
By: DANIEL GOLDEN, ESQ.  
One Bryant Park  
New York, NY 10036-6745  
(212) 872-1000

For Certain Personal  
Injury/Death Plaintiffs:

Hilliard Munoz & Gonzales LLP  
By: BOB HILLIARD, ESQ.  
719 South Shoreline Boulevard #500  
Corpus Christi, Texas 78401  
(361) 882-1612

For Plaintiffs'  
Executive Committee:

Otterbourg  
By: MELANIE L. CYGANOWSKI, ESQ.  
230 Park Avenue  
New York, NY 10169  
(212) 905-3622



APPEARANCES (Continued):

For Motors Liquidation  
GUC Trust:

Gibson, Dunn & Crutcher LLP  
By: KEITH R. MARTORANA, ESQ.  
200 Park Avenue  
New York, NY 10166-0193  
(212) 351-4000

For Additional Ignition  
Switch Pre-Closing  
Accident Plaintiffs:

Andrews Myers  
By: LISA M. NORMAN, ESQ.  
1885 Saint James Place, 15th Floor  
Houston, TX 77056-4110  
(713) 850-4200

TELEPHONIC APPEARANCES:

For Takata Plaintiffs:

Stutzman, Bromberg, Esserman & Plifka  
By: SANDER L. ESSERMAN, ESQ.  
2323 Bryan Street  
Suite 2200  
Dallas, TX 75201-2689  
(214) 969-4900



1 (Proceedings commence at 3:05 p.m.)

2 THE COURT: Please be seated. We're here in Motors  
3 Liquidation Company, 09-50026. This is a status conference  
4 scheduled at the request of certain parties in interest. The  
5 Court has received a flurry of letters and attachments over the  
6 last few days relating to this matter.

7 Mr. Weisfelner, I'm going to ask you to start.

8 MR. WEISFELNER: Thank you, Judge. Your Honor, first  
9 of all, welcome back from vacation.

10 THE COURT: It's been a while, actually, but --

11 MR. WEISFELNER: I'm assuming that like us, you  
12 anticipated this status conference was going to have a  
13 different tone and tenor. In any event, Ed Weisfelner from  
14 Brown Rudnick, together with my partner, Howard Steel. Your  
15 Honor, also on our side of the courtroom, William Weintraub and  
16 Gregory Fox from Goodwin Procter.

17 Your Honor, we have all three co-leads from the MDL  
18 who were also, in different capacities, signatories to the  
19 settlement agreement or intended signatories to the settlement  
20 agreement. Steve Berman, Elizabeth Cabraser, Robert Hilliard  
21 were all in transit when we heard that this hearing was going  
22 to take a different turn. Lisa Norman, I believe, is also in  
23 court to round out the -- what I'll call plaintiffs' side of  
24 the question, all intended signatories to the settlement  
25 agreement, the drafts of which were provided to Your Honor.



1           Your Honor, as you know, based on the announcement I  
2 made in open court way back in May, the parties, defined as  
3 everyone on this side of the table, the GUC Trust and, to a  
4 very important extent, the GUC Trust beneficiaries, some 66  
5 percent of all the beneficiaries represented by the Akin Gump  
6 firm, have been involved, frankly, since before May in  
7 discussing the contours of a potential resolution of any number  
8 of open matters that are on Your Honor's docket or could be put  
9 on Your Honor's docket, including late-filed claims, a  
10 propriety of late-filed claims, and the extent to which those  
11 claims could or should be allowed.

12           Your Honor, following the May announcement in court,  
13 we spent many, many months of discussion among the parties.  
14 And as I think Your Honor can see through the email chains that  
15 we provided early this morning, no later than late July, early  
16 August, there was a final deal among the parties that was  
17 subject to some additional fine-tuning of the documentation.  
18 And I'll get back to that in a minute, but there were lots and  
19 lots of submissions that crossed between the GUC Trust and the  
20 unit holders on the one hand and the plaintiffs' side on the  
21 other hand, including, in particular, expert reports submitted  
22 both by economic loss plaintiffs' retained experts and personal  
23 injury/wrongful death retained experts as to the value of their  
24 claims.

25           THE COURT: Is the pre-closing at --



1 MR. WEISFELNER: Yes, pre-closing.

2 THE COURT: -- injury or death plaintiffs?

3 MR. WEISFELNER: Correct, Your Honor. There were  
4 declarations from Mr. Hilliard, from Mr. Berman, from  
5 Ms. Cabraser, from Ms. Norman. There was even a declaration  
6 that was provided by Wilmington, the GUC Trust trustee, by a  
7 woman by the name of Beth Andrews. And again, from our  
8 perspective -- well, before I get there, we also spent a ton of  
9 time on the parties with noticed experts, in particular, with  
10 the Epoch firm, trying to devise a notice procedure for this  
11 settlement that would involve both direct mail notice in the  
12 form of a postcard with reference to an appropriate website for  
13 the longer version of the agreement, and we also worked quite  
14 hard on social media and other methodologies for ensuring that  
15 adequate notice went out to the world.

16 Now, Your Honor, no one on our side -- no one in the  
17 world, I suspect -- thought that New GM was going to welcome  
18 the development of a settlement with open arms. We thought  
19 they'd squeal. And, in fact, they started to squeal before  
20 Judge Furman this past Friday.

21 THE COURT: Well, actually, I think at an earlier  
22 hearing before me, Mr. Steinberg, when I advised that I had  
23 received a telephone call from Magistrate Judge Cott about his  
24 acting as a mediator, I think Mr. Steinberg, in substance,  
25 indicated that New GM had not been a party to any discussions.



1 So I was aware of that, at least as of that time if not --

2 MR. WEISFELNER: Certainly. And just to be more  
3 specific, the involvement of Magistrate -- and I continuously  
4 mispronounce his name, it's Cott, I think --

5 THE COURT: Cott.

6 MR. WEISFELNER: -- Cott, really involved a  
7 down-the-road step as between plaintiffs on --

8 THE COURT: He mentioned that it was mentioned at  
9 allocation.

10 MR. WEISFELNER: -- how to allocate. That's right.

11 THE COURT: We didn't talk any further than that  
12 about it, but he advised me.

13 MR. WEISFELNER: My point being that we heard from GM  
14 as recently -- not to suggest that we didn't hear from them  
15 before that, but as recently as Friday during the status  
16 conference before Judge Furman in the MDL.

17 THE COURT: Yes. I first heard about it when I read  
18 the Bankruptcy 360 report of what Judge Furman was told last  
19 Friday, I guess. When the request came for a conference this  
20 week here, I wasn't told why, but I did read the Bankruptcy 360  
21 report.

22 MR. WEISFELNER: And again, you know, this side of  
23 the courtroom, together with the GUC Trust, were accused of all  
24 sorts of collusive bad-faith conduct, and GM announced to Judge  
25 Furman it was their intent, I think, that day or soon as our



1 papers got filed with this Court to immediately seek withdrawal  
2 of the reference.

3 And, Your Honor, again everyone I think anticipated  
4 that New GM would take every available opportunity it had to  
5 contest all or any portion of the settlement agreement when it  
6 came before an appropriate court of jurisdiction, shall we say.  
7 They could have raised collusion. They could have raised  
8 impropriety. They could have raised that the estimation  
9 amounts were outrageous and not supported by the evidence.

10 They didn't choose to do any of that. They didn't  
11 choose to afford anyone, including victims, their due process  
12 day in court. They instead, from what we currently understand,  
13 insisted on a meeting with the GUC trustee, which happened I  
14 think, if today is Thursday, apparently on Tuesday of this  
15 week, a meeting to which the GUC Trust beneficiaries,  
16 represented by Mr. Goldman at Akin Gump were excluded.

17 And somehow, during the course of that meeting  
18 between GM and the GUC Trust, the GUC Trust purported to  
19 abandon not only its fiduciary duties, but a settlement that it  
20 already agreed to and to announce to us, not before 3:30  
21 yesterday, that they were, quote, "taking a different tack."

22 Now, Your Honor, this is all still fresh news to us.  
23 We've only had a couple of hours to consult with our clients  
24 and our colleagues, but I can tell Your Honor what we currently  
25 contemplate being the way forward. We know that what's on the



1 calendar are the late claims filings, and I would ask Your  
2 Honor to give us a couple of weeks to figure out how we proceed  
3 on those.

4 But frankly I think there may very well need to be  
5 some preliminary inquiries. And like many in the media, it's  
6 important to us that we gather the facts before we speak. But  
7 some things we could speak to immediately, and that is we  
8 firmly believe that what we had with the GUC Trust was an  
9 enforceable agreement under New York law, notwithstanding the  
10 fact that signatures had not been appended to those agreements.

11 THE COURT: I didn't read -- you appended to your  
12 letter a unsigned copy of the agreement, and I can't say that  
13 I've studied every aspect. I did read through it this morning,  
14 the --

15 MR. WEISFELNER: Sure. And that's absolutely true.  
16 The signatures of the GUC Trust never got appended.  
17 Mr. Golden, for the GUC Trust beneficiaries, indicated that  
18 they were done and they would sign as soon as they got word  
19 that the GUC Trust signed. We were all in possession of  
20 execution copies and ready to sign, which would have been the  
21 first step before we submitted documents to you.

22 But, Your Honor, I think as you can see from the  
23 email traffic, this wasn't a question of whether we had a deal.  
24 This was a question of finalizing documents, and in point of  
25 fact, Gibson Dunn clearly indicated they were done with all of



1 the operative documents, many of them they had the proverbial  
2 pin on, and that they were merely awaiting their clients' final  
3 consent to the form of the documents.

4 And again, Your Honor ,I don't want to argue the  
5 merits, but I firmly believe, based on everything we know and  
6 everything we've researched in the relative short period of  
7 time we have, that if we chose to, we could require the GUC  
8 Trust to perform under the agreement they had -- we think is  
9 enforceable under New York law.

10 We also believe that New GM may have liability for  
11 what I'll generally refer to as tortious interference. We are  
12 told, but have no reason to know for a fact, that the GUC  
13 Trust's about face was the subject of or occasioned by some  
14 very direct, very serious threats issued either by New GM or  
15 New GM's professionals to the GUC Trust, the administrator of  
16 the GUC Trust and their professionals.

17 And, Your Honor, in an effort to understand all the  
18 facts before we move any further forward, we are going to seek  
19 discovery from the GUC Trust, from New GM, in terms of  
20 understanding who all attended this very critical meeting this  
21 week, what discussions preceded that meeting, what, if any,  
22 inducements were made, what, if any, threats were extended, and  
23 whether the inducements crossed the line of Title 18.

24 Your Honor, that's really all I had to tell you by  
25 way of update. We are -- devastated is the wrong word. We are



1 shocked and amazed that after months of collective work by the  
2 only party that -- under the plan of reorganization for Old GM  
3 and under the GUC Trust agreement approved by new GM as the  
4 buyer, the only party in interest that has standing to  
5 deliberate on late claims and the only party authorized to take  
6 a position with regard to the allowance or estimation of late  
7 claims, the GUC Trust, after working with us for months,  
8 somehow was convinced virtually overnight to back out. And we  
9 intend to get to the bottom of that. Whether it takes efforts  
10 to discovery, whether the unitholders themselves exercised  
11 their rights under the trust agreement to replace the trustee,  
12 all remains to be seen.

13           There are a couple of other things that I think are  
14 preliminary, but I'll put them on the table in any event. The  
15 GUC Trust is possessed of material. I don't remember the exact  
16 dollar amount, 4- or \$500 million. Once upon a time, we had a  
17 proceeding before your predecessor with regard to injunctive  
18 relief, seeking to ensure that until the late claims  
19 controversy were resolved, no further distributions got made  
20 out of the GUC Trust. The record will reflect that Judge  
21 Gerber found in our favor. However, he required us to post a  
22 very significant supersedeas bond.

23           One of the interesting aspects of the reported  
24 agreement between New GM and the GUC Trust that's the subject  
25 of the letter you got from King & Spalding, I think it was

1 yesterday, is that New GM, in effect, will guarantee a rate of  
2 return. Well, that means, I presume, that if we press forward  
3 again, the supersedeas bond has, thanks to our good sponsor,  
4 New GM, been taken off the table. But, Your Honor, we can't  
5 see or stand still for subsequent distributions out of this  
6 trust under the present facts and circumstances.

7           So, Your Honor, I hope you'll give us some time to  
8 get our ducks in a row, figure out where do we go from here.  
9 I'm hearing rumors of the fact that the GUC Trust administrator  
10 wants to take a meeting with the GUC Trust beneficiaries and  
11 maybe they'll have second thoughts about abandoning this deal  
12 or second thoughts about entering into this new deal that's  
13 been offered by New GM. So there are still a lot of balls in  
14 the air. And, Your Honor, I know all of us want to get on with  
15 late claims and estimation and allowance, but if you'd give us  
16 a couple of weeks just to get our act together, we'd appreciate  
17 it.

18           THE COURT: Thank you, Mr. Weisfelner.

19           MR. WEISFELNER: Thank you, Judge.

20           THE COURT: I'd like to hear from the GUC Trust  
21 counsel next.

22           MR. MARTORANA: Good afternoon, Your Honor. Keith  
23 Martorana of Gibson, Dunn & Crutcher on behalf of Wilmington  
24 Trust Company as GUC Trust administrator.

25           THE COURT: Can I ask you why you were smirking when



1 Mr. Weisfelner was delivering his remarks to the Court?

2 MR. MARTORANA: Well, Your Honor, the reason why I  
3 was smirking was because, frankly, I was at the meetings. And  
4 to be totally candid with Your Honor, the only people that were  
5 at the meetings were counsel for New GM and counsel for the GUC  
6 Trust. There were no principals at the meeting, although we,  
7 of course, spoke with principals afterwards.

8 The concept that any of this discovery, which, I  
9 mean, to the extent we file a motion, which I think was  
10 anticipated, certainly might be acceptable, I mean, with  
11 reservation of --

12 THE COURT: What motion are you going to file?

13 MR. MARTORANA: We're -- our intention is to file a  
14 9019 motion seeking approval of the deal, the proposed deal  
15 with New General Motors. That deal, Your Honor, was outlined  
16 in a letter that we filed yesterday.

17 THE COURT: I read the letter.

18 MR. MARTORANA: Okay. So just to get back to your  
19 question, Your Honor, I was obviously -- I was at that meeting.  
20 The concept that there was any untoward threats or anything  
21 that was illicit that happened at that meeting, in my view, is,  
22 I mean -- well, I guess the discovery will show it, if we have  
23 discovery, but it just frankly didn't happen. So that is why I  
24 was smirking, Your Honor. At the end of the day --

25 THE COURT: It didn't seem very funny to me, but you



1 seemed to think so.

2 MR. MARTORANA: What's that?

3 THE COURT: I was watching you as Mr. Weisfelner was  
4 delivering his remarks, and you seemed to think it was funny.

5 MR. MARTORANA: Well, Your Honor, I mean, I didn't  
6 think -- I thought it was --

7 THE COURT: This is a serious matter.

8 MR. MARTORANA: I agree it's a serious matter, Your  
9 Honor. I definitely do not disagree with that. I just did  
10 not, frankly, understand. I think that it's a stretch -- I  
11 mean, obviously he wasn't there, but I think it's a stretch to  
12 think that that --

13 THE COURT: When was the meeting?

14 MR. MARTORANA: The meeting was on, I believe,  
15 Tuesday, Tuesday of this past week.

16 THE COURT: And who was present?

17 MR. MARTORANA: Mr. Steinberg, Mr. Davidson, myself,  
18 Mr. Williams, and Mr. Gillette, who are over in the corner.  
19 Those were the only participants in the meeting.

20 THE COURT: And --

21 MR. MARTORANA: Oh, and I'm sorry, there was someone  
22 on the phone from Kirkland & Ellis, as well, Mark Nomellini  
23 from Kirkland & Ellis.

24 So, Your Honor, the fact of the matter is, you know,  
25 obviously we have -- I don't disagree with Mr. Weisfelner's



1 statements that we had been working with him --

2 THE COURT: It just happened -- you know, as I said  
3 earlier, I didn't read the proposed settlement agreement in  
4 detail. It's a very lengthy --

5 MR. MARTORANA: It is.

6 THE COURT: -- exhibit, but it would seem to have  
7 reflected a very considerable amount of time in negotiating the  
8 agreement in the various --

9 MR. MARTORANA: It did.

10 THE COURT: -- exhibits. Can you tell me --

11 MR. MARTORANA: It did. I do not disagree with that.

12 THE COURT: Can you tell me approximately how long  
13 the negotiations were going on.

14 MR. MARTORANA: Well, I think I would say that the  
15 concept of negotiations had been going on for, I mean, probably  
16 close to a year, I think.

17 THE COURT: Well, without the concept. These were  
18 very --

19 MR. MARTORANA: The actual true --

20 THE COURT: Stop. Wait until I finish my questions.

21 Attached to Mr. Weisfelner's letter as -- are various  
22 exhibits, voluminous exhibits, but the settlement agreement is  
23 -- and its immediate exhibits are quite voluminous. Can you  
24 tell me how long the negotiations and drafting of the actual  
25 settlement documents went on for?



1 MR. MARTORANA: I would say about two months I think  
2 is probably accurate, but --

3 THE COURT: And you had one meeting with New GM this  
4 week that caused Wilmington Trust to abandon the settlement  
5 agreement?

6 MR. MARTORANA: We did, Your Honor.

7 THE COURT: One meeting. Okay.

8 MR. MARTORANA: One meeting. Yes, we did, Your  
9 Honor. In our view, as a fiduciary, we were initially willing  
10 to go forward with the deal, with the settlement as presented.  
11 Obviously it was --

12 THE COURT: And what is it --

13 MR. MARTORANA: -- never signed off on.

14 THE COURT: And what is it that New GM said that  
15 persuaded your client to abandon the deal that had been under  
16 discussion for considerable time and negotiation of documents  
17 for quite a long time?

18 MR. MARTORANA: Well, certainly they reminded of many  
19 of the things we already knew, which was the risk --

20 THE COURT: Go ahead. None of this is privileged, so  
21 tell -- I want to hear what you have.

22 MR. MARTORANA: Sure. They reminded us of all the  
23 risks that were associated with the proposed settlement, in  
24 particular the execution risks, which I can get into if you'd  
25 like. But there were certainly numerous execution risks.





1 THE COURT: Well, there's going to be discovery, so I  
2 would like to hear now -- and it probably will inform the  
3 discovery.

4 MR. MARTORANA: Sure.

5 THE COURT: And I'm sure you'll be complete in  
6 telling me what was -- how long did the meeting last?

7 MR. MARTORANA: Maybe two hours --

8 THE COURT: Okay.

9 MR. MARTORANA: -- at most, I would say.

10 THE COURT: And were documents circulated to you in  
11 advance of the meeting?

12 MR. MARTORANA: No, there were no documents  
13 circulated.

14 THE COURT: Was the decision to abandon the  
15 settlement made at the meeting?

16 MR. MARTORANA: The -- well, again, there were no  
17 principals there, so there was no decision that could be made  
18 at that meeting. There was an offer that was floated, which  
19 was tentative. We followed up with our principals. They  
20 followed up with their principals. And then, over the next day  
21 or so, that proposal was boiled down to something more  
22 concrete.

23 THE COURT: And tell me what the proposals that New  
24 GM made to you at the meeting.

25 MR. MARTORANA: Well, the proposal that they made at



1 -- the first proposal that they made was continuing litigating  
2 and we will pay your litigation costs against the plaintiffs.  
3 That was the initial proposal that they made. We ultimately  
4 said, it's interesting, that sounds like something that we  
5 might be able to work with, but at the end of the day, what our  
6 two main concerns here are, that we're continuing a litigation  
7 really for the benefit of New GM. We feel like we've been  
8 pulled into this, so obviously we're worried about spending  
9 trust -- unitholder money for those purposes.

10 But then the -- a secondary or perhaps even bigger  
11 issue is that at some point, probably after the term loan  
12 litigation is fully and finally resolved, the GUC Trust will be  
13 in a position to make a distribution to unitholders. At this  
14 point the GUC Trust cannot make a distribution to unitholders  
15 until we figure out whether or not the 502(h) claim of the term  
16 loan defendants is legitimate. But at some point that will be  
17 resolved, our mediation settlement or otherwise, and then we'll  
18 be in a position to make a distribution. And to the extent --

19 THE COURT: Anybody who negotiates a settlement with  
20 you better be careful because they may spend months doing it,  
21 only to have you pull the rug out from under them at the last  
22 hour. You're smiling again.

23 MR. MARTORANA: I'm sorry, I guess the question was I  
24 didn't -- I don't understand --

25 THE COURT: My comment was that anybody who



1 negotiates a settlement with you better be careful because you  
2 may well pull the rug out from under them after months of  
3 negotiation. That was my comment as to which you had your big  
4 grin on your face again.

5 MR. MARTORANA: Well, I apologize, Your Honor. But  
6 at the end of the day, we are a fiduciary and we're going to  
7 act in our fiduciary capacity. And if that means abandoning a  
8 proposal --

9 THE COURT: And what other proposals did New GM make  
10 to you that you considered in, I assume -- well, I won't ask  
11 you what you recommended to your client. What other proposals  
12 did New GM make to you in the form of consideration for  
13 abandoning the deal with the plaintiffs?

14 MR. MARTORANA: Sure. So again, getting back to the  
15 point about a distribution, we said our two main concerns were  
16 that we're continuing a litigation. It's -- there's been a  
17 number of costs that have been associated with that obviously.  
18 It's continuing to pull down on trust assets.

19 And then the secondary aspect is that if we are in a  
20 position to make a distribution and these claims continue to be  
21 out there, there is no way that we're going to -- well, we  
22 probably would not be able to make a distribution over the  
23 existence of those claims. And we would therefore -- currently  
24 we're investing our assets -- required to invest our assets in  
25 treasuries, and that is not really going to be a sufficient



1 rate of return that we could otherwise get if this deal were to  
2 go forward, and this deal -- the plaintiffs' deal, and if we  
3 were able to get the releases that we would be hoping for under  
4 that -- under the plaintiffs' deal.

5           So the offer after further discussion that was made  
6 was that New GM would be potentially willing to provide us with  
7 a rate of return. We don't know what that would be. We've  
8 agreed that we would enter into good-faith negotiations to  
9 determine what that rate of return would be because, among  
10 other things, we don't know what the corpus of the trust will  
11 be at that time. So it's hard to come to something -- to that  
12 kind of agreement today.

13           But those -- we felt that those two things,  
14 particularly given the fact that we believe on the merits we  
15 have very strong arguments against the late claims, on Pioneer,  
16 on equitable mootness, on tolling arrangements, that this offer  
17 from New GM dealt with the main concerns that we were -- that  
18 we had. And as a fiduciary, we felt that we needed to do that.  
19 We felt that you don't necessarily go for -- I understand that  
20 hedge funds want to go for the absolute home run at the risk of  
21 \$21 million and everything else out there, but we represent  
22 all --

23           THE COURT: What's the \$21 million?

24           MR. MARTORANA: So the way that the plaintiffs'  
25 proposal would work is that the GUC Trust would, up front, pay



1 \$6 million for purposes of noticing. So that would be out the  
2 door before we even really get in front of Your Honor. That  
3 would just be a sunk cost for postcards. And then it would be  
4 followed by a \$15 million payment and our agreement to support  
5 a \$10 billion claim as against New GM. And we felt, among  
6 other things, that there was a significant amount of execution  
7 risk associated with that. And, frankly, among other things,  
8 that proposal, what we were really hoping to get out of it was  
9 a release, get a true release from all the plaintiffs.

10           Given the fact that that proposal did not contemplate  
11 and the plaintiffs would not agree to a Rule 23 settlement  
12 certification, I think there's a potential execution risk  
13 associated with actually accomplishing what it was that we  
14 wanted to accomplish.

15           THE COURT: Okay. Anything else you want to tell me  
16 now?

17           MR. MARTORANA: No. Thank you, Your Honor.

18           THE COURT: All right.

19           Mr. Golden, I'd like to hear from you next.

20           MR. GOLDEN: Yes. Good afternoon, Your Honor.

21 Daniel H. Golden, Akin, Gump, Strauss, Hauer & Feld, counsel  
22 for what's known as the participating unitholders.

23           Your Honor, this is really unfortunate that we find  
24 ourselves in this situation where everybody now, in open court,  
25 has to air their dirty laundry about a settlement that I think



1 was agreed to in principle. I will say for the record I can  
2 confirm the factual recitation that Mr. Weisfelner made as to  
3 the facts leading up to the announcement by New GM and the GUC  
4 Trust of their -- of GUC Trust's disavowal of that settlement  
5 agreement and their intention to enter into a purported new  
6 agreement with New GM.

7           Your Honor, I think it's clear something very odd is  
8 going on here. We worked arm in arm, shoulder to shoulder,  
9 with the GUC Trust, Wilmington Trust as the trustee and the  
10 trust administrator, and with its counsel, Gibson Dunn, over  
11 several months to negotiate and document a settlement. We had  
12 many, many, many conversations, drafting sessions, redrafting  
13 sessions to get to a point where we were, as of last Friday, to  
14 get to a settlement, a global settlement as between the  
15 plaintiff class, the GUC Trust, and the unitholders.

16           So let's talk a minute about who we represent. We  
17 represent 65 percent of the unitholders. That is the  
18 shareholders of the trust. They are the only beneficiaries of  
19 the trust should the reserves be freed up. That's the reserves  
20 of the 4- or 500 million that Mr. Weisfelner referred to, and  
21 we represent 65 percent.

22           Look, I've worked really closely with the Gibson Dunn  
23 lawyers. I like them. But to hear them talk about that they  
24 have fiduciary duties, yes, they do. Wilmington Trust has  
25 fiduciary duties. They have fiduciary duties to my clients.



1 Now, we don't represent all of the unitholders, but everyone  
2 who has raised their hand and said, "I'm here and I want to get  
3 involved," we represent them.

4 We worked really hard to get to this global  
5 settlement, which would have had the benefit or the result of  
6 eliminating all the late-claim litigation and all the  
7 underlying allowance of those claims. We think that that's a  
8 settlement that this Court would have welcomed. And that's  
9 why, in part, we worked so hard to get there. But in a blink,  
10 in really literally a blink, without any conversation to the  
11 unitholders or their counsel, without any invitation by Gibson  
12 Dunn or Wilmington Trust to say, we've met with GM, they have  
13 an alternative proposal on the table, we'd like to get your  
14 views on it.

15 We certainly shared views with them for months and  
16 months, but when it came to the point where they were willing  
17 to disavow that settlement and consider a new settlement which  
18 does not work for the participating unitholders, we sent a  
19 letter to Your Honor this morning so that there's no mistake.  
20 All of the unitholders we represent will not and do not support  
21 the proposed settlement with GM.

22 So you have to ask the question, what is Wilmington  
23 Trust thinking about when they want to go forward with a  
24 settlement that has the disapproval of every fiduciary that it  
25 represents who's weighed in on the subject? Now, I'm not



1 saying that Wilmington Trust, who as an institution we worked  
2 with for years. Frankly, I'm just surprised we find ourselves  
3 in this situation given our prior relationship and experience  
4 with Wilmington Trust. But what are they thinking about going  
5 forward with a settlement over what will be active opposition  
6 by the unitholders? Something --

7 THE COURT: Well, active opposition by New GM to the  
8 proposed settlement that was --

9 MR. GOLDEN: That's right.

10 THE COURT: I mean, one way or the other, there's  
11 going to be active opposition.

12 MR. GOLDEN: That's absolutely right. But the one  
13 difference is the trust has no fiduciary obligations to New GM.  
14 They do have fiduciary obligations to our client. And I  
15 confirm or reaffirm what Mr. Weisfelner said, that we did  
16 expect active opposition from New GM. We've had active  
17 opposition from New GM almost throughout the inception of these  
18 matters, so that's not a total surprise. But what is  
19 shockingly surprising to us is what was the motivation, what  
20 was the rationale, what happened at that two-hour meeting to  
21 have this absolute sea change.

22 Now, look, everybody's imagination can run wild.  
23 Were there threats? Were there inducements? But there was  
24 something there that caused, in two hours, for Wilmington Trust  
25 and its counsel just to disavow five months of hard work, and





1 we intend to find out what it is. It's odd to us that we had  
2 been originally -- when I said "we," the participating holders,  
3 through their counsel, had been invited to the meeting that GM  
4 had scheduled with Wilmington Trust, and then promptly  
5 disinvented.

6 THE COURT: Who disinvented you?

7 MR. GOLDEN: We were advised by counsel for  
8 Wilmington Trust that we were not -- we were no longer invited  
9 to it. I didn't question them. I accepted that at face value.  
10 I don't know who demanded it, but that's where the  
11 communication came from.

12 Your Honor, I don't want to make this situation  
13 worse. We intend, to the best of our ability, still to work  
14 with our trustee. But if we can't, then we're going to  
15 consider our alternatives, and that is not a threat, but it  
16 just -- it's a recognition of the reality of the situation that  
17 we find ourselves in.

18 This case, this overhang of the plaintiffs' claim,  
19 have held this trust in abeyance for a very long time. The  
20 goal of this settlement was to, once and for all, be done with  
21 the plaintiffs, get an absolute, full-bore release from the  
22 plaintiffs in exchange for us doing the \$6 million of noticing  
23 costs -- and I'll come back to that in a second -- and a  
24 \$15 million payment. Part and parcel of that overall  
25 settlement agreement, but not interdependent upon getting the



1 release, was the agreement of the GUC Trust, supported by the  
2 participating holders, to estimate the totality of the  
3 plaintiffs' claims at somewhere around \$10 billion, which would  
4 have the effect of triggering what's known as the accordion  
5 shares. I know that's the part that GM doesn't like. But they  
6 would have every opportunity to object to that estimated  
7 settlement of \$10 billion. We weren't looking to deprive them  
8 of their ability to do that.

9           This conference, because Your Honor remarked that it  
10 wasn't originally made clear to Your Honor what the purpose of  
11 this conference was, was to preview that settlement proposal  
12 with you. We were certainly going to invite New GM, and we  
13 thought it would be professionally courteous of us to advise  
14 New GM in advance of the terms of our proposed settlement,  
15 which Mr. Weisfelner and I did in a telephone call with  
16 Mr. Steinberg and a partner whose name I forget at Kirkland and  
17 Ellis last Wednesday.

18           Well, what did they do with that courtesy? They  
19 turned around, without any notice to us, and complained to  
20 Judge Furman. Why Judge Furman? I'm not sure. These matters  
21 aren't before Judge Furman. This settlement certainly wasn't  
22 going to be before Judge Furman. But it was their attempt, I  
23 surmise, to attempt to start to poison the well. Well, I was  
24 very glad that Judge Furman's reaction was, take that up with  
25 the bankruptcy court.

1 THE COURT: I should say I -- whenever I've had a  
2 conversation with Judge Furman, I've disclosed that I have.  
3 And I had a brief telephone conversation with Judge Furman on  
4 Tuesday morning. He left a voicemail for me on Monday evening  
5 and I -- we spoke on Tuesday. I -- he wanted me to be -- he  
6 wanted to be sure that I knew that there had been a  
7 presentation before him, or statements before him, that a  
8 settlement had been reached. I told him that I read the  
9 Bankruptcy 360 report about it. I told him that there had been  
10 a request for a conference here, I had scheduled it, I hadn't  
11 been informed at the time what the conference was about, but I  
12 had scheduled it. And that was the substance of the phone  
13 conversation that I had with Judge Furman.

14 So I've tried to make a point, whenever he and I have  
15 spoken, I've put it on the record. We do not talk about the  
16 merits of anything, but we informed --

17 MR. GOLDEN: So --

18 THE COURT: -- each other of procedural posture of  
19 things.

20 MR. GOLDEN: So continuing, we had had the  
21 conversation with Mr. Steinberg and his colleague. The purpose  
22 of scheduling a status conference with you, Your Honor, was to  
23 preview the settlement, not to argue the merits, but really to  
24 preview the noticing procedures that we intend to follow  
25 because this settlement contemplated a global release from all



1 the claims. And we were going to do -- when I say "we," the  
2 GUC Trust was going to do and spend \$6 million on noticing to  
3 make sure the plaintiffs -- something that Old GM never really  
4 got around to doing, and that's why we find ourselves in this  
5 mess. But we were going to give direct notice to every party  
6 who was the subject of a recall notice, so that's over  
7 12 million parties, as well as notice to every party who has  
8 started a lawsuit against Old GM/New GM based upon a presale  
9 accident claim, so that nobody could complain this time that  
10 the world has been put on notice as to the proposed settlement.

11 But we wanted to get a sense from Your Honor before  
12 we went out and spent \$6 million whether Your Honor thought  
13 that would be an appropriate scope of notice. That's all we  
14 had originally intended to do at the status conference. Well,  
15 obviously events and facts have overtaken it, and we are where  
16 we are.

17 Again, I'm here representing economic players.  
18 They're not looking to go for the home run, as Mr. Martorana  
19 said. What they're looking for is peace in the valley. They  
20 want to get rid of the plaintiffs' claims and the plaintiffs'  
21 claims against the trust for all time so that when the  
22 avoidance action is settled or finally resolved, a final  
23 distribution could be made.

24 THE COURT: What's the face amount of the  
25 approximately 65 percent of the unitholders -- of the claims of

1 the unitholders you represent?

2 MR. GOLDEN: So it's not in dollar amount; it's  
3 number of units.

4 THE COURT: Units.

5 MR. GOLDEN: Can I confer with my colleagues?

6 THE COURT: Yeah, go ahead, sure.

7 (Counsel confer)

8 MR. GOLDEN: It's 21 million units out of  
9 approximately 31 million units.

10 THE COURT: Okay. All right. Thank you, Mr. Golden.

11 MR. GOLDEN: Thank you, Your Honor.

12 THE COURT: Mr. Steinberg.

13 MR. STEINBERG: Your Honor, Arthur Steinberg from  
14 King & Spalding on behalf of New GM.

15 Mr. Weisfelner, in his presentation, said that he did  
16 not want to speak prematurely until he gathered the facts, and  
17 then he proceeded to speculate as to what the facts may be.  
18 And there's a temptation that I have to be able to try to  
19 respond to each and every time that he misstated what happened.  
20 However --

21 THE COURT: Let me say first, I thought your letter  
22 to the Court was intemperate and inappropriate. You could have  
23 raised the issues that you raised. So I know that there's very  
24 strong feelings on -- there's more than two sides here -- on  
25 all sides, but I didn't appreciate the tone of your letter.



1 But go ahead.

2 MR. STEINBERG: Your Honor, you're referring to the  
3 letter that I sent on Tuesday as --

4 THE COURT: Yes, I am.

5 MR. STEINBERG: The reason why -- just to explain  
6 that letter on Tuesday is that, as Mr. Golden said, that on  
7 August 9th, we had a telephone call with Mr. Weisfelner and  
8 Mr. Golden. What Mr. Golden left out was that on the agenda  
9 letter for the MDL on August 11th, under the section under  
10 successor liability, the specific question of whether late  
11 claims are being sought in the bankruptcy court would have  
12 relevance to the briefing on successor liability, and the judge  
13 wanted to know whether something had to be done or not. So if  
14 there was going to be a resolution of the late claims --

15 THE COURT: Well, the fact that you raised it with  
16 Judge Furman doesn't bother me in the least. What I'm  
17 complaining -- what I'm commenting on is I thought the tone of  
18 your letter to me was inappropriate.

19 MR. STEINBERG: Your Honor, it's never my intention  
20 to write an inappropriate toned letter to Your Honor. And to  
21 the extent that we did, then we apologize. The reason for the  
22 letter was that this status conference was scheduled without  
23 our participation, without being in compliance with Your  
24 Honor's rules as to scheduling a status conference, and because  
25 I expected that what was going to happen at the scheduling --



1 at the status conference was that they were going to try, in  
2 effect, to get an advanced blessing on a notice provision in  
3 connection with --

4 THE COURT: Well, that wouldn't -- I can assure you  
5 that that would not happen.

6 MR. STEINBERG: But that's what I was essentially  
7 told on August 9th and that they were going to ask Your Honor  
8 to compel New GM to produce information so they can comply with  
9 their notice obligation, and they were all going to try to do  
10 that in a chambers conference with Your Honor, presumably off  
11 the record. And that was why I wanted to write to Your Honor  
12 that if there was going to be a chambers conference, it really  
13 should be in open court, it should be recorded, and that if  
14 they wanted to have specific relief that they were going to  
15 request at the conference, that I should be able to see that in  
16 writing and to have the ability, Your Honor, to give you our  
17 version of why you should not be able to do that so Your Honor  
18 would be able to make a ruling on an informed record. And that  
19 was the motivation --

20 THE COURT: I don't make rulings at chambers  
21 conferences. I don't have chambers conferences if any parties  
22 in interest object to having chambers conferences. I do them  
23 in open court as we're doing today on the record. So I very  
24 rarely -- occasionally I will have a chambers conference, but  
25 only if all parties in interest affected by the discussion are



1 present. I just want to assure you of that, Mr. Steinberg.  
2 And I don't grant relief in a chambers conference. Everything  
3 happens in court on the record.

4 MR. STEINBERG: Now, Your Honor, I think that -- to  
5 some extent that there will be a motion filed, presumably by  
6 the GUC Trust, to reference the arrangement that was agreed to  
7 with New GM, and there will be a pleading that will be filed.  
8 There will be an opportunity to object. We will have the  
9 opportunity to put in what really happened and why the GUC  
10 Trust had changed its position. And it wasn't because anybody  
11 induced anything. It was because what they had proposed was  
12 what Mr. Martorana described as execution risk. Our belief was  
13 it was impossible to get to that point in time.

14 The reality was -- is that they were proposing a  
15 settlement where a person who was paying the liability was New  
16 GM on account of a \$10 billion claim which we thought had no  
17 basis in reality in connection with primarily time-barred  
18 claims where the plaintiffs had purposefully not pursued  
19 remedies against Old GM for years after the recalls were  
20 announced, and that they had rolled over on those defenses on  
21 late claims without giving any credence to that value.

22 THE COURT: Well, Judge Gerber had determined that  
23 there was equitable mootness, and it wasn't until the Second  
24 Circuit reversed and specifically referenced the accordion  
25 provision in its opinion that at the first conference I had, I





1 think, after the Second Circuit opinion, I raised the question  
2 about late claims because it seemed clear to me, A, the Second  
3 Circuit had reversed with respect to equitable mootness, that  
4 there was the potential for substantial new value. I asked the  
5 question -- I think I asked the question of you, I asked the  
6 question of Mr. Weisfelner, how close to the \$35 billion  
7 threshold of allowed unsecured claims were you.

8           And because that's -- as I -- I didn't go back and  
9 read it again, but my recollection is that was the trigger  
10 point for additional New GM shares. So I think it must have  
11 been very close to the first hearing when I presided after the  
12 Second Circuit opinion that I raised those questions. And  
13 we've had a discussion since then about motion for late claim.  
14 You wanted to take discovery about the Pioneer factors. I  
15 authorized discovery regarding the Pioneer factors.

16           So there's a history here, Mr. Steinberg. You don't  
17 have it quite right. All right. I don't know whether the  
18 settlement that was proposed that's unsigned -- Mr. Weisfelner  
19 believes it's enforceable under New York law. There's a whole  
20 body of law about when an agreement can be enforceable. I'm  
21 not taking any position about it at all, whether it's  
22 enforceable or not. I don't know whether it would have been  
23 approved over New GM's objection. Not taking a position about  
24 that. It just -- the events of the last week, I've had a  
25 couple of letters that indicated that the plaintiffs believed

1 they were making progress with the GUC Trust in its settlement  
2 negotiations. But I stay out of settlement negotiations.  
3 Okay? When Magistrate Judge Cott called and asked if I  
4 objected to his being a mediator, I made clear I didn't, and I  
5 informed everybody in court about that call.

6 So there's a history, not quite what you describe it  
7 as. I want -- go ahead and finish, and then I'll say what I --

8 MR. STEINBERG: Your Honor, the history that you may  
9 not be aware of that preceded your handling of this case was  
10 that Judge Gerber, in connection with the first distribution  
11 that was made by the GUC Trust in 2014, did not see anybody  
12 trying to block that distribution. And when he confronted on  
13 the oral argument on the four threshold issues, when he asked  
14 Mr. Weisfelner, why didn't you do anything to block the  
15 distribution, why didn't you sue Old GM for your Old GM  
16 liabilities, why did you only sue New GM under a successor  
17 liability, he said it was a tactical decision that they had  
18 made to only pursue New GM.

19 In Judge Gerber's April 2015 sale decision, he  
20 specifically references the tactical decision made by the  
21 plaintiffs not to sue Old GM, but only to sue New GM as one of  
22 the bases to support his equitable mootness finding, that they  
23 had, in effect, precipitated what went on.

24 The two threshold issues, Your Honor, that you asked  
25 us to brief in connection with the late claims issue was, one,



1 was there a tolling agreement and when -- if there was, when  
2 did the tolling agreement take place. And that was one of the  
3 issues because one of our arguments is that even after the  
4 announcement of the recalls and before the equitable mootness  
5 issue was even raised by Mr. Golden to add as a threshold  
6 issue, the plaintiffs had tactically decided not to sue Old GM  
7 in the face and the knowledge of the recalls. That is an  
8 argument. They have always had the ability to file late  
9 claims --

10 THE COURT: We may get there, Mr. Steinberg, because  
11 if I have to go on and address the late claim motion as a class  
12 claim, I will. Okay?

13 MR. STEINBERG: Your Honor, I --

14 THE COURT: It's premature for me to hear the  
15 arguments now.

16 MR. STEINBERG: Right. Your Honor, it's -- the only  
17 thing I would like to say to you is that there is a large  
18 portion of things that were said to you today that are either  
19 misleading or would benefit from context, written context,  
20 written pleadings to be able to understand it. I have a list  
21 of things that I jotted down. I don't think necessarily a  
22 conference is the time to do it, but I do want to say one issue  
23 as long as I have Mr. Berman here in court because Mr. Berman  
24 said in the MDL, and Mr. Weisfelner repeated it at the  
25 conference, on page 38, he said, "I'm pretty confident that the

1 sale agreement actually gives New GM no rights to object."

2 Now, you heard Mr. Golden say, "Of course, New GM always would  
3 have the right to object." But Mr. Berman's lawyer in this  
4 case is Mr. Weisfelner.

5 And before Your Honor was -- took over this case in  
6 2015, at the status conference before Judge Gerber on  
7 July 16th, Mr. Weisfelner said if we were -- meaning as, on the  
8 one hand, GUC Trust unitholders and on the other hand able to  
9 consummate a settlement, it would be brought to the Court's  
10 attention under Rule 9019, I presume either in this court or to  
11 Judge Furman, depending on the resolutions of the motions to  
12 withdraw the reference on notice to New GM. And New GM will  
13 have an opportunity to oppose that 9019, take the position  
14 that, as Your Honor indicated, we colluded, in effect, to stick  
15 it to New GM, and they'll be entitled to be heard on the merits  
16 with regard to that contention, and the settlement will not be  
17 effective unless and until the Court overrules the objection.

18 So Mr. Berman told Judge --

19 THE COURT: Well, the settlement isn't going to be  
20 effective until I approve it unless --

21 MR. STEINBERG: That's correct.

22 THE COURT: -- the reference is withdrawn and Judge  
23 Furman deals with it.

24 MR. STEINBERG: But this is --

25 THE COURT: So whether -- you know, the issue of New



1 GM's standing can be dealt with at an appropriate time.

2 MR. STEINBERG: The only thing that I --

3 THE COURT: Today is not the time.

4 MR. STEINBERG: Right. The only thing I just wanted  
5 to highlight was that you heard Mr. Weisfelner say today and  
6 Mr. Berman say in the MDL conference that New GM would not have  
7 standing, and all I wanted to do is provide --

8 THE COURT: I didn't hear anybody tell me that New GM  
9 doesn't have standing. I called you to the podium, and we'll  
10 see.

11 MR. STEINBERG: No, no. Mr. Weisfelner I think  
12 actually alluded to that, as well, too, but --

13 THE COURT: I don't think he did. I don't think he  
14 did.

15 MR. STEINBERG: But certainly Mr. Berman did on the  
16 MDL conference.

17 THE COURT: Perhaps he did before Judge Furman. I  
18 haven't read the transcript of what took place before Judge --

19 MR. STEINBERG: It's attached to one of the letters.

20 THE COURT: Yes, I know. There's a voluminous stack  
21 of papers that --

22 MR. STEINBERG: And so, Your Honor, I go through  
23 this --

24 THE COURT: I read as much of it as I could.

25 MR. STEINBERG: I go through this not to be able to



1 argue New GM's standing in connection with a proposed  
2 settlement. That is not before Your Honor. I only do that for  
3 one reason, which is that what you've heard today is -- to some  
4 extent needs to be put in context, needs the benefit of written  
5 pleadings to be able to make a presentation to Your Honor so  
6 that you're able to think about it before you take to the bench  
7 instead of having it presented in a disjointed way.

8 THE COURT: Here's how we're going -- well, first,  
9 all right, anything else, Mr. Steinberg?

10 MR. STEINBERG: Only that -- I think that's it, Your  
11 Honor. Thanks.

12 THE COURT: Okay. Anybody else wish to be heard?

13 All right. Mr. Martorana indicated that he  
14 anticipates making a 9019 motion asking the Court to approve  
15 the settlement between the GUC Trust and New GM.

16 Mr. Weisfelner articulated a position that he  
17 believes that the plaintiffs have an enforceable agreement  
18 under -- was the written agreement governed by New York law?

19 MR. WEISFELNER: Yes, Your Honor.

20 THE COURT: Okay. He believes that the plaintiffs  
21 have an enforceable agreement, even though there's nothing  
22 signed, against the GUC Trust. I'm not going to -- I may well  
23 hear both motions at the same time. It's clear that discovery  
24 needs to take place. I direct that counsel meet and confer  
25 promptly and discuss discovery and set forth, hopefully, an



1 agreed plan of discovery that will cover both proposed  
2 settlements. To the extent there are disagreements, they can  
3 be presented to me. With respect to discovery disputes  
4 generally, I don't require formal motions. We can schedule  
5 another conference fairly soon. I want you to meet and confer  
6 and see if you can resolve issues about discovery within the  
7 next week. I understand people have vacations and -- you know,  
8 within two weeks you ought to be able to resolve those issues.

9           Get a date from Deanna for another conference in  
10 court, open court status conference. If you have a stipulation  
11 on a plan of discovery, you can present it to me without a  
12 hearing. If not, we'll take it up in early September and try  
13 and get that resolved.

14           I've heard a lot of things in a short amount of time  
15 today. I don't know whether the trust agreement includes  
16 provisions on threshold levels to change the trustee, for  
17 example. I don't know how that works, and at this stage I  
18 don't really want to know how it works. But certainly that was  
19 an issue that was raised today as to the possibility that  
20 unitholders are going to seek to replace the trustee. I'm not  
21 advocating at all. Any matters that Wilmington Trust has been  
22 involved in that I've presided over, they've done a very  
23 professional job. I have no reason to think that they didn't  
24 do so here. But there are a lot of moving parts. So at a  
25 status conference in early September, I would like to know



1 quite specifically how the parties collectively propose to  
2 proceed.

3           So what I've heard is at least two -- and I'm not  
4 setting a deadline for the GUC Trust to file a 9019 motion. I  
5 want fairly soon. It doesn't have to be before we have a  
6 conference in early September, but I do want that fairly soon.  
7 This has got to get -- you know, if there's no settlement, if  
8 the GUC Trust's proposed settlement with New GM is rejected, if  
9 there's no enforceable settlement by the plaintiffs with the  
10 GUC Trust, we'll go forward with the contested motion for leave  
11 to file a late class claim and we'll just head down that  
12 litigation road if that's the direction it's going to go.

13           There may be other issues that some or all of you  
14 wish to raise, and I want to make clear to all of you any  
15 pleadings or correspondence with the Court needs to be civil in  
16 tone and identify those issues which, in good faith, people  
17 believe there needs to be discovery or needs to be presented to  
18 the Court in an appropriate context, motion, I assume.

19           Anything else anybody wants to raise today?  
20 Mr. Steinberg?

21           MR. STEINBERG: Your Honor, I understand clearly the  
22 notion about discovery and working with -- on a meet and  
23 confer, but right now we presumably will have a pleading by the  
24 GUC Trust, I presume to put forth the New GM agreement. We  
25 don't have anything on the other side.





1 THE COURT: Well, you only pulled the rug out from  
2 under them yesterday. Why am I not surprised? They thought  
3 they had an agreement with the GUC Trust --

4 MR. STEINBERG: No, no, Your --

5 THE COURT: -- Mr. Steinberg. And they have a very  
6 voluminous set of documents. Are you going to give notice to  
7 the same group of people that they propose and in the same  
8 manner that they propose to give notice? And who's going to  
9 pay for that?

10 MR. STEINBERG: Well, there's a clear reason why we  
11 would not do that, because there's no giving up of any rights.  
12 There's no -- there's nothing that plaintiffs are giving up.  
13 The plaintiffs are going to have their day in court to -- set  
14 to litigate their matter.

15 THE COURT: Well, I don't know. I'm not sure.  
16 That's going to be an issue the Court's going to have to  
17 address as to what notice must be given, and it may be that  
18 Wilmington Trust, as the trustee, is going to be required by  
19 the Court to give notice to every one of the unitholders of a  
20 proposal for the Court to approve a 9019 settlement.

21 And, of course, if they want to make that motion for  
22 approval of the settlement and -- the parties better address  
23 who has to have notice of it. And if they want to make the  
24 motion, they're either going to pay for it or New GM is going  
25 to pay for it.



1 MR. STEINBERG: Well, Your --

2 THE COURT: Okay. And -- well, we'll see. Okay.

3 MR. STEINBERG: But my --

4 THE COURT: So don't think, Mr. Martorana, that by  
5 the fact that you're not going to have to do the notice program  
6 that would have been required by the plaintiffs, that you're  
7 not going to have to do exactly the same thing in order to get  
8 the Court to consider the 9019 motion that you're talking  
9 about.

10 MR. MARTORANA: May I speak, Your Honor?

11 THE COURT: Not yet.

12 MR. MARTORANA: Okay.

13 MR. STEINBERG: Your Honor, so that my comments are  
14 hopefully better put into context, I wasn't criticizing the  
15 plaintiffs for not having a pleading as of today.

16 THE COURT: It sounded that you were.

17 MR. STEINBERG: No, no. Your Honor, I was saying  
18 that we were talking about a discovery program without the  
19 framework of a pleading.

20 THE COURT: Well, you know exactly what the framework  
21 is. There's a fairly voluminous set of papers that they've  
22 presented. You can sit down and you can negotiate. If you  
23 can't -- you can work out the discovery plan, and they'll tell  
24 you what it is they want. And if you're opposing it or you  
25 can't resolve it, you'll be back to me very shortly.



1 I'm assuming that the plaintiffs contemplate making a  
2 motion to enforce what they believe is an enforceable  
3 settlement, so I will have before me at the same hearing two  
4 proposed conflicting settlements. Okay? And an evidentiary  
5 hearing is undoubtedly going to be required. Okay? And I'm  
6 not going to do them separately or seriatim. And if Wilmington  
7 Trust beats the plaintiffs to the punch in making the motion,  
8 that's not going to make a difference because I'm going to  
9 schedule them together, and there's going to be discovery  
10 beforehand.

11 So I'm directing you to meet and confer and try and  
12 agree on a proposed discovery plan. If you can't agree, you're  
13 going to be back to me very shortly and I'll resolve the  
14 differences. I'd also like to know from both sides when they  
15 contemplate filing pleadings in support of their positions, the  
16 9019 that Wilmington Trust wants to present, the -- it's not a  
17 9019 -- well, I guess it is. It's -- you think you have an  
18 enforceable settlement. It'll be presented as a 9019.

19 MR. STEINBERG: I think it was --

20 THE COURT: So I will have competing settlements.

21 MR. STEINBERG: I think, Your Honor, you answered my  
22 question, which was that at some point there needed to be a  
23 pleading --

24 THE COURT: Yes.

25 MR. STEINBERG: -- to tie it into the discovery, and



1 all I was standing and rising is that --

2 THE COURT: Well, I'm not sure, Mr. Steinberg,  
3 because even if they didn't, I think that they'd be entitled to  
4 that same discovery with respect to any 9019 proposal from  
5 Wilmington Trust.

6 MR. STEINBERG: I agree with that. The only question  
7 is, is that if there's going to be an evidentiary hearing as to  
8 whether there was an enforceable agreement with the plaintiffs,  
9 there needed to be a pleading on that. That's not on the  
10 record. And all I was saying is that --

11 THE COURT: Okay. We'll be left with no man's world  
12 with neither settlement being approved, but that's the way  
13 it'll be.

14 MR. STEINBERG: I understand.

15 THE COURT: Okay.

16 MR. STEINBERG: That was the only --

17 THE COURT: But you all -- specifically I am asking  
18 that you need to address who would need to receive notice of  
19 Wilmington Trust's 9019.

20 So let's -- any other issues that need to be  
21 addressed today? Mr. Weisfelner?

22 MR. WEISFELNER: Your Honor, I promise we'll be  
23 quick. I want to get out of here, and I presume Your Honor  
24 would like to do the same. I just find it strange that in  
25 contemplation of discovery on a motion by the plaintiffs to



1 enforce Wilmington's obligations under the settlement  
2 agreement, New GM's counsel stands up to tell you, well, we're  
3 going to take discovery on that because they haven't filed a  
4 motion yet.

5 THE COURT: Well, let's --

6 MR. WEISFELNER: If anyone would have said it --

7 THE COURT: Mr. Weisfelner, I think I've addressed  
8 the discovery issue. I don't need to hear any more.

9 MR. WEISFELNER: You're right. But here's my only  
10 other concern in terms of an orderly procedure where we meet  
11 and confer and do our best as professionals to work out a  
12 consensual arrangement. New GM is already on the record that  
13 any consideration of our settlement, whether compelled under  
14 New York law or otherwise, that New GM insists that that matter  
15 be before Judge Furman, insists they intend to withdraw the  
16 reference.

17 I just point that out because it would be I think  
18 very difficult, if not impossible, to work out a scheduling  
19 motion where the motion to compromise between New GM and the  
20 GUC Trust stays here and the motion to settle, as obligated  
21 under New York law, as threatened by New GM, goes upstairs.

22 THE COURT: Mr. Weisfelner --

23 MR. WEISFELNER: We'll try --

24 THE COURT: Mr. Weisfelner, the filing of a motion to  
25 withdraw the reference does not stay the action before the



1 bankruptcy court. I have always, in every matter before me,  
2 made clear that when a motion to withdraw the reference is  
3 filed, I continue on. The case continues forward. I do not  
4 stay matters because of a motion to withdraw the reference.

5 Judge Furman can do what he believes is appropriate  
6 under the circumstances. What -- and I suspect at an  
7 appropriate time it'll be briefed. The claims allowance  
8 process is so clearly part of the core bankruptcy function.  
9 Okay?

10 MR. WEISFELNER: Thank you, Judge.

11 THE COURT: So what Judge Furman decides is up to  
12 Judge Furman. I am pushing forward. And with either a  
13 litigated motion for leave to file a late class claim or one or  
14 more settlements that might alter that -- I mean, if the  
15 settlement with Wilmington Trust is approved -- if Wilmington  
16 Trust's settlement with New GM is approved, the litigation  
17 still goes forward before me. Okay? It doesn't alter that.  
18 So one way or the other, we're pushing forward. If Judge  
19 Furman wishes to withdraw the reference, if he believes it's  
20 appropriate to do it, he'll do that. But unless and until he  
21 does, we go forward.

22 You know, there have been a few occasions where  
23 literally it was crystal clear because of jury trial demands,  
24 et cetera, there was an absolute right to a jury trial. With  
25 other judges I've just -- you know, we went forward. It was a

1 signed case -- you know, there was a signed pretrial order.  
2 The matter went to the district court, and it's funny that  
3 within a matter of days it settled. Nobody wanted the trial  
4 anymore.

5 But -- so we will push forward and I will resolve  
6 whatever is before me. I read in, you know, I think, Mister --  
7 one of Mr. Steinberg's letters an issue about 157(b)(5). I  
8 don't think that affects estimation, which as I understand was  
9 the approach that the proposed settlement of the plaintiffs  
10 had. We'll see what we get to.

11 First step is what discovery is going to take place.  
12 I want to know, when we meet next, when you're each going to  
13 file pleadings in support of your respective motions. They are  
14 going to be heard together. Anything else anybody wants to  
15 raise today?

16 Mr. Golden?

17 MR. GOLDEN: Just one last thing, Your Honor. I --  
18 it would be helpful to the unitholders, no one else, that we  
19 don't leave today's court session with an absolute certainty  
20 that the New GM/GUC Trust arrangement is actually going to be  
21 signed and finalized. I --

22 THE COURT: I can't effect that, Mr. Golden.

23 MR. GOLDEN: No. I understand that, but I want to  
24 say that the unitholders are optimistic in having further  
25 discussions with its trustee, its fiduciary, to make it clear



1 what the unitholders' position is. So there may be an  
2 eventuality where the proposed New GM/GUC Trust settlement does  
3 not actually go forward.

4 THE COURT: One or the other may not go forward.

5 MR. GOLDEN: Thank you, Your Honor.

6 THE COURT: Okay. We'll take it as it comes, but in  
7 the meantime, I've got to deal with the situation that's  
8 presented to me.

9 MR. GOLDEN: Thank you, Your Honor.

10 THE COURT: We're adjourned.

11 (Proceedings concluded at 4:13 p.m.)

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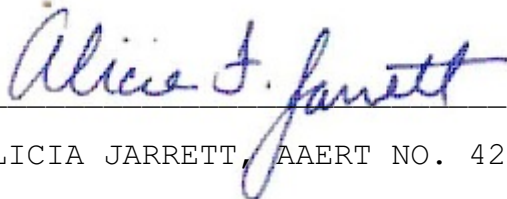
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C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.



ALICIA JARRETT, AAERT NO. 428

DATE: August 20, 2017

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